them that a deposition has been granted and that they have the opportunity to participate. The private litigant shall submit an affidavit or certification describing the extent of the search for parties and potential parties and listing the names of the parties and potential parties notified.

(e) Where an employee has already provided testimony, any party wishing to obtain further testimony from that employee concerning the same matter or occurrence, whether in the same or a different private legal proceeding, may submit a request to agency counsel to waive the restrictions of paragraph (d) of this section. The request shall, in addition to meeting the requirements of §9.15 of this part, state why the requester should be permitted to gather additional information despite not having previously requested the information when it had an opportunity to do so, and why the additional testimony is now required and the prior testimony or previously supplied documents are insufficient.

§ 9.11 Legal proceedings between private litigants: Demands.

(a) If an employee receives a demand that has not been validly issued or served, agency counsel may instruct the employee not to comply with the demand.

(b) If an employee receives a demand (validly issued and served) to testify or produce records, agency counsel, in his or her discretion, may grant the employee permission to testify or produce records only if the purposes of this part are met or agency counsel determines that an exception is appropriate.

(c) If a demand is issued to an employee, agency counsel shall contact the requester of the demand, inform that person of the requirements of this part, and may, in agency counsel's discretion, ask that the demand be withdrawn.

(d) If the requester of the demand refuses to have it withdrawn or fails to comply with this part, the Department may seek to quash the demand.

(e) If the court or other competent authority declines to grant the Department's motion to quash, agency counsel shall instruct the employee whether to testify or produce documents pursu-

ant to the demand. Agency counsel may permit the testimony under §9.1(c) of this part. If response to a demand is required before the court or other competent authority rules on the motion to quash and the court fails to stay the demand, the employee must appear at the stated time and place, produce a copy of this part, and respectfully refuse to provide any testimony or produce any documents. Agency counsel shall take steps to arrange for legal representation for the employee. Agency counsel shall advise the employee how to respond, including not to testify, if the court or other competent authority rules that the demand must be complied with irrespective of these regulations.

§ 9.13 Legal proceedings between private litigants: Procedures to request records.

(a) In a legal proceeding between private litigants, a party who wishes to obtain records from the Department shall submit to agency counsel a request for the records. The request will ordinarily be handled in accordance with the Department's procedures concerning requests for records found at 49 CFR part 7. If the party does not follow the procedures specified in that part, the request must be accompanied by a statement setting forth the relevance of the records to the proceeding. The request should be resolved before any request for testimony under §9.15 is submitted. Where a request for testimony includes a request for additional records, it shall indicate precisely how this new request differs in scope from any previous request in order to avoid agency duplication of effort. Agency counsel shall notify the requester of the approval or denial of the request.

(b) [Reserved]

§ 9.15 Legal proceedings between private litigants: Procedures to request testimony.

(a) Any party seeking the testimony of an employee in a legal proceeding between private litigants, concerning facts within the employee's personal knowledge with regard to matters arising out of the employee's official duties, shall, rather than serving a demand for the testimony, request the